

RESPONSE TO OFFICE ACTION  
DATED AUGUST 18, 2006

Appln. No. 10/671,646

- 2 -

November 17, 2006

**REMARKS**

This is in response to the Office Action dated August 18, 2006. Reconsideration is respectfully requested for the reasons given below.

In the Office Action dated August 18, 2006, the Examiner rejected Claims 1-8, the only claims pending in this case, as being unpatentable over the art and for the reasons set forth in the September 20, 2004 paper. In that paper, Claims 1, 3, 4 and 6-8 were rejected under 35 USC 103(a) as unpatentable over Nomura in view of Cal Spas. Claims 2 and 5 were rejected under 35 USC 103(a) as unpatentable over Nomura, Cal Spas and Inoue et al. Both rejections are respectfully traversed.

In the present Office Action, the Examiner states that a rejection made in the Office Action dated May 4, 2005 of all claims under 35 USC 102(b) on the grounds that the Declaration of Valmassoi filed on March 23, 2005 was regarded as ineffective to overcome the Cal Spas reference. Although it is unclear why it should follow that the 102(b) rejection is withdrawn, and because the factual statements relied on support the proposition that the Cal Spas is not effective as a reference in a 103(a) rejection as well as in a 102(b) rejection, applicants have enclosed herewith the following Declarations which address and should overcome the issues raised by the Examiner concerning his objections to the Valmassoi Declaration. These documents comprise:

(1) Declaration Under 37 CFR 1.131

This declaration has been executed by all inventors named in the application. This Declaration has attached to it Exhibits identified respectively as Exhibit A, B and C. Exhibit A is a copy of a Master Spas brochure illustrating a spa incorporating the claimed features of the present

RESPONSE TO OFFICE ACTION  
DATED AUGUST 18, 2006

Appln. No. 10/671,646

- 3 -

November 17, 2006

invention. The brochure was first printed on or about November 5, 2000 so that it could be distributed to sales personnel of Master Spas on November 6, 2000 and to the public at a trade show in Orlando, Florida, on November 8, 2000. Also attached to the 1.131 Declaration is a copy of a Master Spas technical training manual. The technical training manual bears a date of January 11, 2001 on the page labeled "1" which is the page immediately following the Table of Contents. The features disclosed in the brochure include those set forth in the claims of this application. The Declaration and its accompanying Exhibits are relied on as evidence of reduction to practice of the claimed subject matter of the application at a time prior to any date that applicants' are aware of for invention (either conception or reduction to practice) of the Cal Spas product shown in the brochure in the Cal Spas literature relied on by the Examiner in his rejections of this application.

(2) Declaration of Terry M. Valmassoi

A second Declaration executed by Terry M. Valmassoi alone primarily addresses issues relevant to the issue of "offer for sale". In the Declaration, in paragraph number (3), Mr. Valmassoi more particularly explains the nature of the Master Spas prototype that was built, namely, that this prototype was intended to show to key dealers and sales representatives who were invited to an executive council meeting held at the Master Spas factory on June 5, 2000. As explained in paragraph (4), Mr. Valmassoi explains that the prototype did not have the means necessary for raising and lowering the compartments which house the speakers and television set. The prototype was intended to demonstrate the concept of the invention to those who would be offering it for sale. The speakers and television were not electrically connected, and the control means for raising and lowering the housings for

RESPONSE TO OFFICE ACTION  
DATED AUGUST 18, 2006

Appln. No. 10/671,646

- 4 -

November 17, 2006

them were not present. As explained in paragraph (5), the purpose of the meeting was to solicit feed back from those familiar with the relevant market place. No prices had been established, no sales literature was prepared and no offers for sale were made either directly or indirectly at the time of the meeting. Mr. Valmassoi, as Executive Vice President and a person intimately involved with the planning and running of the meeting and was present throughout, is in a position to make these statements. As set forth in paragraph (6), Mr. Valmassoi is in a position to know the facts concerning confidentiality. In support of his recollection concerning confidentiality, Declarations of four attendees who were Master Spas sale representatives state that they recall that they signed a confidentiality agreement before entering the meeting room. Declarations of other attendees could be obtained, but this will take time as some are retired, some have left the business and cannot be located and are possibly deceased. It is sincerely hoped that the Examiner will consider these four as representative. Further, Mr. Valmassoi in paragraph (7) indicates that on the basis of his knowledge and recollection, the standard form of confidentiality agreement used by Master Spas was the form of agreement signed by the attendees at the June 5, 200 meeting. This document is attached to this Declaration as Exhibit B. Mr. Valmassoi further states in paragraph (7) that commercial documents and in particular price lists or quotations, advertising brochures publicity release or other documents related to the product were not made available at this meeting or even in existence at that time.

Summary

In summary, the Declaration of the inventors of the claimed subject matter show both conception and reduction to practice before any date that applicants have been able to

RESPONSE TO OFFICE ACTION  
DATED AUGUST 18, 2006

Appln. No. 10/671,646

- 5 -

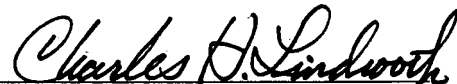
November 17, 2006

ascertain for the Cal Spas literature. The Master Spas brochure and the technical training manual (Exhibits A & C of the Declaration under 37 CFR 1.131) clearly show a spa incorporating the features of the claimed invention. The Declaration of Valmassoi, specifically the parts relating to the June 2000 meeting, establishes the confidential nature of that meeting. Lest there be any misunderstanding, the personnel attending that meeting were Master Spas sales representatives. Members of the public were not invited nor were sales documents made available. There were no offers for sale communicated either orally in or writing. There is no precedent for a finding of offer for sale under the facts presented.

For the reasons given in this response, as well as the response dated November 4, 2005, the claims should be allowed. Prompt and favorable action is respectfully requested.

Respectfully submitted,

SYNNESTVEDT & LECHNER LLP

By:   
Charles H. Lindrooth  
Reg. No. 20,659

1101 Market Street, Suite 2600  
Philadelphia, PA 19107-2950  
Telephone: (215) 923-4466  
Facsimile: (215) 923-2189

CHL/dml  
Enclosures